

Community resources

[Follow us on Twitter](#) [Check our Reddit](#) [Twitter this](#) [Digg this page](#) [Contact us on IRC](#)

courage is contagious

Viewing cable 09BOGOTA3127, COURTS CONSIDER TWO CONTROVERSIAL STRIKES AT DRUMMOND AND

If you are new to these pages, please read an introduction on the [structure of a cable](#) as well as how to [discuss them](#) with others. See also the [FAQs](#)

Understanding cables

Every cable message consists of three parts:

- The top box shows each cables unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

To understand the justification used for the classification of each cable, please use this [WikiSource](#) article as reference.

Discussing cables

If you find meaningful or important information in a cable, please link directly to its unique reference number. Linking to a specific paragraph in the body of a cable is also possible by copying the appropriate link (to be found at the paragraph symbol). Please mark messages for social networking services like Twitter with the hash tags **#cablegate** and a hash containing the reference ID e.g. **#09BOGOTA3127**.

Reference ID	Created	Released	Classification	Origin
09BOGOTA3127	2009-10-05 15:53	2011-08-30 01:44	CONFIDENTIAL	Embassy Bogota

Appears in these articles:

<http://www.elespectador.com/wikileaks>

VZCZCXYZ0000
RR RUEHWEB

DE RUEHBO #3127/01 2781554
ZNY CCCCC ZZH
R 051553Z OCT 09
FM AMEMBASSY BOGOTA
TO RUEHC/SECSTATE WASHDC 0218
INFO RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC
RHMFISS/CDR USSOUTHCOM MIAMI FL
RHMFISS/DEPT OF JUSTICE WASHINGTON DC
RHMFISS/FBI WASHINGTON DC
RUCPDOG/DEPT OF COMMERCE WASHINGTON DC
RUEAIIA/CIA WASHINGTON DC
RUEHBR/AMEMBASSY BRASILIA 0063
RUEHC/DEPT OF LABOR WASHINGTON DC
RUEHCV/AMEMBASSY CARACAS 0062
RUEHGL/AMCONSUL GUAYAQUIL
RUEHPE/AMEMBASSY LIMA 0069
RUEHQT/AMEMBASSY QUITO
RUEKJCS/SECDEF WASHINGTON DC

C O N F I D E N T I A L BOGOTA 003127

SIPDIS

E.O. 12958: DECL: 2019/10/05
TAGS: [ELAB](#) [EAID](#) [ETRD](#) [KJUS](#) [PHUM](#) [PREL](#) [USTR](#) [CO](#)
SUBJECT: COURTS CONSIDER TWO CONTROVERSIAL STRIKES AT DRUMMOND AND
FENOCO

REF: BOGOTA 1751

CLASSIFIED BY: Marcos C. Mandojana, Deputy Political Counselor;
REASON: 1.4(B), (D)

SUMMARY

1. (C) Two controversial court cases concerning strikes in the coal sector have reached the highest levels of the Colombian judicial system. The National Mining and Energy Industry Workers' Union (SINTRAMIENERGETICA) initiated the first strike over work-safety issues at Drummond's La Loma coal mine, shutting down production for four days in March 2009. The National Union of Workers in Metal Mechanics, Metallurgy, Iron, Steel, Electro-Metals, and Related Industries (SINTRAIIME) convened the second strike on March 24 at Northern Colombian Railways (FENOCO) -- 41% Drummond-owned -- due to the company's refusal to recognize the union. SINTRAIME halted regional rail shipments of coal for 26 days, until local authorities forcibly reestablished rail service. Together the two strikes cost Drummond, FENOCO, and regional governments millions in revenue and royalties. The Supreme Court recently ruled that the SINTRAIME strike was illegal, and FENOCO fired 16 SINTRAIME leaders as a result. Drummond has not fired anyone yet, but Drummond executives said they would fire 15-20 SINTRAMIENERGETICA leaders if the Supreme Court upholds a lower court ruling that the strike was illegal. End Summary.

STRIKE ONE: UNION CHARGES COMPANY NEGLIGENCE

2. (SBU) SINTRAMIENERGETICA leaders and Drummond executives confirmed that the March 22 death of Dagoberto Clavijo Barranco precipitated the March 23 strike. Clavijo died when he lost control of a tanker truck and it plunged off a 15-meter embankment. SINTRAMIENERGETICA XXXXXXXXXXXX characterized the accident as the latest in a series of deaths and injuries attributable to company negligence. seriously injured, in the 13 years that Drummond has operated mines in the region.

3. (SBU) Drummond Vice President of Corporate Affairs Jose Miguel Linares supplied PolOffs with Mr. Clavijo's training reports and a copy of the internal investigation into the accident. Company records show that Clavijo received 106 hours of tanker truck operation and safety instruction in February 2009, and scored "adequate" to "excellent" on each module/exam. The internal investigation concluded that neither "substandard conditions" nor "mechanical failure" caused the accident. Linares told us that

"operator error" was the likely cause. He also said that the safety incidence rate -- an index measuring time lost due to safety incidents per 100 employees per year -- at Drummond's mines has been consistently lower than the U.S. average in surface mining activity (.33 compared to 1.33 in 2008).

14. (SBU) An estimated 8,000 direct and indirect Drummond employees participated in the four-day strike, including 2,200 SINTRAMIENERGETICA members. XXXXXXXXXXXX for the United Federation of Workers in the Mining, Energy, Metallurgy, Chemical, and Similar Industries (FUNTRAENERGETICA) -- the umbrella confederation that includes SINTRAMIENERGETICA -- said that the strike ended when a majority of the workers decided to return to the mine, citing their financial imperative to work given hard economic times. Drummond issued a statement on March 27 calling the strike illegal and thanking workers for breaking ranks with union leaders and returning to their jobs.

COURT DECISION ON STRIKE LEGALITY PENDING

15. (SBU) The matter was referred to the courts pursuant to Law 1210 of 2008, which transferred authority to determine strike legality to the court system in line with ILO recommendations (reftel). On July 21, the Administrative Tribunal of Valledupar, Cesar ruled that the strike was illegal because it had not taken place as part of a collective bargaining process in accordance with Substantive Work Code (CST) Article 444, nor had it been carried out using the proper procedures as defined by CST Article 445. The legal window for initiating a strike is 2-10 days following a general assembly vote in favor of striking. The SINTRAMIENERGETICA strike was extemporaneous, and did not adhere to the proper legal procedures. SINTRAMIENERGETICA has appealed the decision to the Supreme Court, where it is pending.

16. (C) According to Colombian labor law (CST Article 450), a company may dismiss employees who participated in an illegal strike. (NOTE: Colombian labor leaders advocate deletion or revision of Article 450, while private sector companies say it constitutes an important check and balance in company-labor relations. End Note.) In a September 23 press statement, Drummond said it had dismissed five union workers for illegal activities -- destruction of property and violence -- during the strike, and suspended an additional four as a step towards dismissal pending the Supreme Court ruling on strike legality (expected in two to three months). Drummond's Linares told us the company may fire up to 20 of the most active organizers if the court rules in the company's favor.

STRIKE TWO: UNION PROTESTS NON-RECOGNITION

17. (SBU) Problems between SINTRAIME AND FENOCO began on November 4, 2008 when 350 FENOCO workers joined the metals industry union and attempted to initiate collective bargaining. The railway company refused to recognize SINTRAIME, largely on the basis that it had a preexisting collective bargaining agreement with another union. FENOCO argued that Law 904 of 1951 prohibited more than one convention from existing within the same company. It also claimed that SINTRAIME, a metals industry union, had no legal right to organize workers in the transportation sector.

18. (SBU) SINTRAIME appealed to the Ministry of Social Protection (MPS) to force FENOCO to negotiate, but the MPS ultimately took a legal position favorable to the company. On March 16, the MPS issued a resolution declaring that FENOCO was not legally obligated to negotiate with SINTRAIME because the union did not meet the legal requirements to organize FENOCO workers. On March 24, SINTRAIME declared the strike and occupied the rail lines, citing FENOCO's failure to fulfill its legal obligation to negotiate and "MPS passivity" in the matter, unions leaders said.

19. (SBU) The strike lasted 26 days, until April 18 when the MPS ordered local authorities to dislodge the protestors and restore rail transportation on the grounds that the railway service provided by FENOCO under government concession was certified by the National Institute for Concessions (INCO) as an "essential public service." Under Colombian law, such certification prohibits strikes by employees of contract companies. The MPS is no longer the final arbiter of strike legality though (Law 1210 of 2008).

Accordingly, the matter was referred to the Superior Tribunal of Santa Marta.

FENOCO WINS ON APPEAL, FIRES 16 UNIONISTS

110. (SBU) The Labor Chamber of the Superior Tribunal of Santa Marta ruled on April 23 that the company must recognize and negotiate with SINTRAIME in accordance with ILO Convention 154, regardless of whether it has a preexisting convention with another union. The Tribunal also ruled that the company must recognize the union even if its mandate and statutes do not extend to the workers involved, since unions are free to revise and extend their articles of incorporation. Finally, it ruled that transporting coal to port by rail did not constitute an "essential public service." FENOCO appealed to the Supreme Court.

111. (C) The Supreme Court upheld the lower court's ruling that multiple conventions may coexist within a single company. It further ruled that transportation is an essential public service, citing Constitutional Court judgment C-450 of 1995, but said each case should be interpreted on an individual basis (the judgment was equivocal on whether transportation was essential in this specific case). Finally, the Supreme Court ruled that the strike was illegal because SINTRAIME initiated it after the legal period set

forth in CST Article 445. FENOCO President and CEO Peter Burrowes told us that the company fired 16 union leaders on the basis of the ruling. SINTRAIME leaders interpreted the affair as a victory in terms of the revenue losses (\$150 million) they were able to impose on Drummond and FENOCO.
BROWNFIELD

=====CABLE ENDS=====